Cr A 2651/98

XII-189/(Jail)
C. J. P. R. 11/94/2;000

High Court of Madhya Pra...
JABALPUR.
- 7 NOV 1998
Reg. No. 229
Recept Clerk
High Court Jab...

(2)

# APPEAL OF PRISONER

No. 4494 Name इन्द्र भुवन उर्फ छतराम उर्फ छत्तर

Father's name बटोरिका सिंह कंवर निवासी मरदुकला, थाना करलवा, Division Bench (Cri...

Residence जिला बिलासपुर म0प्र0 Age 32 साल

Sentenced to आजीवन कारावास रु0 500/- या एक वर्ष On 10/09/96

Under section 302, 201 भा0दं0वि0 by माननीय अपर सत्र न्यायाधीश कोरबा, जिला बिलासपुर म0 प्र0

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

Certified

1 Date of Application for copy of Judgement .....

2 Date on which copy received 23/10/98

3 Date on which Appeal sent 03/11/98

4 Whether the prisoner wishes to be represented or not – Yes / No

R.P. 1613 7-11-98

No. 4494 Name इन्द्र भुवन उर्फ छतराम उर्फ छतरा भारत सिंह कंवर

Confined in केन्द्रीय Jail रायपुर म0 प्र0

No. 328/तिवि/98 Dated 03/11/1998

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय रजिस्ट्रार जनरल महोदय, माननीय उच्च न्यायालय म0 प्र0 जबलपुर togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न:- म0प्र0क्र0-53/96 की प्रमाणित प्रति,
बंदी का विलंब के संबंध में आवेदन पत्र।

Superintendent
Central Jail Raipur. (M.P.)

Date of receipt in ..... office .....

Date of receipt record to accompany the 10-9-96 to 3-11-98

Memo of Appeal to the Appellate court 730 Sep 21

No ..... Dated Oct 1998

Forwarded to the ..... Nov 9

Date of receipt in Appellate Court .....

(34)

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

**Criminal Appeal No. 2651 of 1998**

Indra Bhuvan alias Chhatram

**Versus**

State of Madhya Pradesh

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**JUDGEMENT FOR CONSIDERATION**

Sd/-
DHIRENDRA MISHRA
Judge

**HON'BLE SHRI L.C.BHADOO ,J.**

Sd/-
L.C. BHADOO
Judge

**POST FOR JUDGMENT ON** 31 - 3 - 2006

Sd/-
Dhirendra Mishra
Judge

(35)

**Division Bench:** **Hon. Shri Justice L.C. Bhadoo &**
**Hon. Shri Justice Dhirendra Mishra,**

**Criminal Appeal No. 2651 of 1998**

**APPELLANT** Indra Bhuvan alias Chhatram

**Versus**

**RESPONDENT** State of M.P.

Smt. Hamida Siddiqui counsel for the appellant.
Shri D.K. Gwalare learned Dy. GA for the State.

**JUDGMENT**
(Delivered on 31-03-2006)

**Per Dhirendra Mishra, J**

The appellant has preferred this appeal under section 374 (II) of the Code of Criminal Procedure from prison through Superintendent, Central Jail Raipur against the judgment dated 10.9.1996 passed by Additional Session Judge, Korba in S.T. No. 53/1996 whereby learned Additional Session Judge after holding the accused/appellant guilty under sections 302 and 201 of the IPC for committing the murder of his wife Lajobai sentenced him to undergo imprisonment for life under section 302 and to undergo RI for three years with fine of Rs. 500/- and in default of payment of fine to further undergo additional imprisonment for one year under section 201 of the IPC.

2. Case of the prosecution in brief is that Smt. Runibai along with Hamrah Patel, Jageshwar and Sarpanch Anjor Singh went to police station Kartala and lodged a report on 24.10.1995 that on 23.10.1995 at about 4.00 p.m. deceased Lajo Bai had left her house after informing her mother in law that she was proceeding for Kaldamar and her dead body was found by the villagers at 5 a.m. on 24.10.1995 near Mudhapar pond. On the basis of this information Merg No. 20/1995 was registered. During Merg inquiry inquest was performed over the body of Lajo Bai on 24.10.1995 vide Ex. P-9. Thereafter, body was sent for post mortem examination to Primary Health Centre Korba vide Ex. P-6 where Dr. P.S. Sisodiya PW-7 conducted the post mortem over the dead body of Lajobai and

submitted his report Ex. P-8. The doctor who conducted post mortem on the body of Lajobai opined that cause of death was asphyxia due to throttling. Crime No. 62/1995 was registered on the information of Station House Officer B.L. Kehri PW-10. After completing the investigation charge sheet was filed under sections 302 and 201 of the IPC against the present appellant, under section 302/34 and 201 of the IPC against accused Trilok Singh and under section 201 of the IPC against accused Smt. Ved Kunwar, in the Court of Judicial Magistrate First Class, Korba who in turn committed the case to the Court of Session Judge Bilaspur from where learned Additional Session Judge, Korba received the case on transfer for trial.

3. Learned Additional Session Judge framed charges under sections 302 read with section 34 and 201 of the IPC against accused Trilok Singh, under section 201 of the IPC against accused Ved Kunwar and under section 302 and 201 of the IPC against accused/appellant Indra Bhuwan. The accused persons abjured their guilt.

4. Prosecution in order to establish the guilt of the accused/appellant has examined as many as 10 witnesses. However, learned Additional Session Judge acquitted the other two accused namely Ved Kunwar and Trilok Singh of the charges leveled against them and convicted and sentenced the accused/appellant Indra Bhuwan as mentioned above.

5. Homicidal death of deceased Lajobai is not in dispute. Dr. P.S. Sisodiaya PW-7 who conducted the post mortem examination on the body of the deceased had noticed that trachea and hide bone of the deceased was fractured, her tongue was protruded and bitten by teeth. Mark of pressing on the left side of the neck, on the left side of trachea was found, multiple bruises were present. He also noticed several bruises near ear, clavicle bone, elbows, and right hand. On internal examination brain membranes were found congested, trachea and hide bone was broken, both the lungs were congested, right chamber of the heart was filled with dark colour blood and left chamber was empty. The doctor opined that cause of death was asphyxia due to throttling. Thus from the statement of the doctor (PW-7) the homicidal death of Lajobai is established.

6. There is no eyewitness to the incident. Learned Additional Session Judge has convicted the accused/appellant on the basis of circumstantial evidence. The circumstances relied upon by the prosecution to establish the involvement of the appellant in crime in question may be summarized as under:

(a) The appellant is the husband of deceased Lajobai.

(b) The neighbours after hearing the cries of the deceased at 8 p.m. on the previous night of the date when the dead body was found, went to the house of the appellant and found the appellant in the company of the deceased when she was alive in his house and at that time the appellant was demanding money from the deceased and she was weeping.

(c) In the following morning at about 5 a.m. dead body of the deceased was found near Mudhapar pond by the villagers.

(d) The appellant went up to the pond to see the dead body of his wife, however, when he was asked to accompany them to the police station for lodging the report, he declined to do so.

7. In order to rest the conviction based on the circumstantial evidence as per the settle principle, the prosecution is required to establish that such evidence satisfy the following tests:-

(I) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(II) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(III) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(IV) the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis that of the guilt of the accused and such evidence should not only be

consistent with the guilt of the accused but should be inconsistent with his innocence.

8. The defence of the appellant as argued by the counsel for the appellant is that the deceased was a patient of epilepsy and she was also suffering from chronic stomach ache since long and she had undergone treatment for her ailments. Earlier also she had fallen in a pond after become unconscious. A day prior to the date on which her dead body was found she had gone to Kaldamar and was not present in her maternal home in the intervening night of 23/24-10-1995. It is argued that body of the deceased was found in a pond which is about one and half k.m. away from the village and there is no evidence that the deceased was assaulted by the appellant or that he after murdering his wife took her body to the pond and disposed of the same. So far as the evidence of last seen is concerned, the deceased being wife of the appellant her presence in the house on the previous night was very natural and only on the basis of this evidence without any further corroboration the appellant cannot be held guilty for committing murder of his wife.

9. On the other hand learned counsel for the respondent/State supports the impugned judgment of the trial Court.

10. We have heard learned counsel for the parties and gone through the evidence available on record.

11. The fact that the appellant is the husband of the deceased is not in dispute. So far as the circumstance that the neighbours went to the house of the appellant at about 8 p.m. after hearing the cries and found the deceased weeping and the appellant was demanding money from her is concerned, to establish this circumstance, the prosecution has examined PW-3 Jainkunwar Bai who has stated in her evidence that at about 8 p.m. when she was in her house along with her husband, she heard the cries and she recognized the voice to be that of the wife of the appellant. After hearing the cries she went to the house of Indra Bhuwan along with her husband and saw that his wife was weeping. On inquiry wife of the appellant told that her husband was demanding money from her and she did not give the same. Thereafter, she returned from there. At that time Indra

Bhuvan was standing in the courtyard. This witness was cross examined by the prosecution after she was declared hostile. In the cross examination she has admitted that she learnt that Lajobai had died. On cross examination she has further admitted that Lajobai was suffering from stomach ache and she had undergone treatment for her ailments. She has also stated in the cross examination that during investigation the police beat the witnesses and obtained illegal gratification from them and pressurized to give statement that Indra Bhuvan killed Lajobai by assaulting her. PW-4 Lalluram has stated that it was the time of Diwali festival, he heard the noise from the house of Indrabhuvan, he came out of his house and went towards his *Baadi* and from there he heard noise. He heard that Lajobai, the wife of the appellant was weeping. She died in the night of Monday, the day on which she was weeping. However, he did not ask Lajobai why she was weeping and on the next day in the morning he learnt that Lajobai had died in Mudhapar. This witness was also declared hostile. In the cross examination he has not stated anything in addition to what he stated in the examination in chief. PW-5 Madwar Singh has stated in his evidence that after hearing that Lajobai was weeping, he went to her house along with his wife Indramati and saw Lajobai sitting in her courtyard and was weeping. Indrabhuvan told that she was not giving money to him. Thereafter, he consoled Lajobai and advised the appellant not to demand money from her and keep quiet and then he returned to his house and on the next day he learnt that Lajobai was dead. This witness has been declared hostile. In the cross examination this witness has not stated anything in addition to what he stated in examination in chief. On cross examination on behalf of the appellant this witness has repeated the allegations against the police that they harassed him and obtained illegal gratification.

12. Except the statement of above three witnesses there is no other evidence available on record to show that the appellant was in any way assaulting the deceased in his house or that the appellant and the deceased went towards Mudhapar pond together when deceased was alive. There is no evidence as to how the dead body was found in Mudhapar pond which is one and half k.m. away from the village of the appellant.

13. On the contrary case of the prosecution as given in the FIR is that the deceased went to village Kaldamar at about 4 p.m. on the previous day. PW-2

Jageshwar Singh who lodged the report has stated in paragraph 7 of his statement that when he asked Indrabhuvan about Lajobai, he told that she was suffering from fever and she had gone to her maternal house at Kaldamar a day before the incident. After the death of Lajobai her father Nohar Singh was called by the S.H.O. who came to the place of incident and identified his daughter Lajobai. He has further stated that deceased Lajobai was suffering from mild fever. PW-10 B.L.Kehri, the investigating officer in paragraph 11 of his statement has stated that during inquiry he did not receive such information that she deceased was sick. However, he has admitted that during inquiry witnesses have stated that Lajobai had left for maternal house Kaldamar a day before the incident.

14. In the light of the above conflicting nature of evidence available on record we are of the considered opinion that the prosecution has failed to establish the circumstance of last seen.

15. So far as the next circumstance that the dead body of the deceased was found near Mudhapar pond and Indrabhuvan had gone to see the dead body along with the villagers but he refused to accompany them to the police station for lodging the report is concerned, to establish this circumstance the prosecution has examined Runibai, the complainant who has stated that she learnt from the Sarpanch Anjor Singh that Lajobai was lying dead near Mudhapar pond, whereupon she went to the house of Indrabhuvan and thereafter they and other villagers went to the place of incident. However, when she asked Indrabhuvan to accompany her to the police station for lodging the report, he declined. However, in the cross examination this witness has stated that Indrabhuvan told her that he was suffering from fever and therefore he would not go. PW-2 Jageshwar Singh, Patel of the village has also stated in his evidence that Indrabhuvan did not go to lodge the report. In the cross examination he has stated that they asked Indrabhuvan to accompany them to police station for lodging the report, he said that his wife was dead and what was the purpose in going to the police station for lodging the report.

16. Thus from the evidence of the above witnesses conduct of the appellant in not going to the police station for lodging the report can not be considered as

abnormal and incriminating circumstance for arriving at the conclusion that the appellant was responsible for causing the death of his wife Lajobai.

17. On the basis of aforesaid discussion and in view of the settled law for holding the accused guilty on the basis of circumstantial evidence, we are of the considered opinion that the circumstances relied upon by the prosecution have not been established and on the basis of evidence available on record the prosecution has failed to establish the involvement of the accused/appellant in the commission of crime in question and thus the benefit of doubt should be extended to the appellant also.

18. In the result, the appeal is allowed. Impugned judgment passed by the trial Court is set aside. Appellant is directed to be set at liberty forthwith if not required in any other case.

**Sd/-**
**L.C. BHADOO**
**Judge**

**Sd/-**
**Dhirendra Mishra**
**Judge**